

DECISION OF THE ANDOVER PLANNING BOARD
AS A SPECIAL PERMIT GRANTING AUTHORITY

ON THE APPLICATION OF
Gerard and Jean LaCroix

For a Special Permit for Earth Movement under Section 6.3 of the Zoning By-Law.

Decision: SP15-06

YES (with conditions)

A public meeting of the Planning Board was held on August 11, 2015, in the second floor conference room of the Town Office Building. Present and voting in the affirmative on the matter were members Zachary Bergeron, Vincent Chiozzi, Ann Knowles and Steven Pouliot.

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TOWN OF ANDOVER, MASS

Pursuant to public notice in the Andover Townsman, a newspaper of general circulation in the Town of Andover, published on July 23, 2015 and July 30, 2015, and notice sent by mail, postage prepaid, to all interested parties pursuant to the provisions of Massachusetts General Laws, Chapter 40A, a public hearing was convened on August 11, 2015 on the application of Gerard and Jean LaCroix for a Special Permit for Earth Movement associated with a Definitive Subdivision development of a residential subdivision. The hearing was closed on August 11, 2015, with the aforementioned members of the Board present throughout.

Premises affected is property owned by Gerard and Jean LaCroix located at 228 and 230 Salem Street shown on Assessors Map 27, Lots 7D and 7E, hereinafter referred to as the "site", on

which a definitive subdivision plan entitled 228 Salem Street would take place.

In consideration of the Special Permit for Earth Movement, the applicant had submitted an earth quantities plan and an erosion and sedimentation control plan for review. In the analysis, as prepared by Andover Consultants there will be approximately 930 cubic yards of material imported to the site. It has been the past practice of the Planning Board to regulate the hours and days of the earth movement activities. In this instance, the Planning Board has determined the scope of the original approval in 2006 has not changed. The special permit issued in 2006 has expired but the subdivision is still valid. The amount of earth movement and controls in place for the conditional approval of the subdivision made the best feasible use of the existing topography. By conditioning the timing of earth movement activities to the time period between the last morning pick-up of school children, and the first afternoon drop off the use will not be unreasonably detrimental to the established future character of the neighborhood or town and further that there are adequate public roadways and municipal utilities.

In consideration of the abutting residences, the anticipated hauling operations associated with the development, the existing vegetation, and the preservation and protection of significant natural features, the Planning Board has conditioned their approval to help mitigate any adverse effects that may be associated with this development. In the opinion of the Board the issuance of the special permit (with appropriate conditions) will not result in unreasonable detriment to the neighborhood or the Town.

In consideration of all of the foregoing, including the plans, documents, and testimony given during the public hearing, the Planning Board hereby approves and issues a Special Permit for Earth Movement, applicable to the property earlier described, and subject to the following conditions:

Conditions of Approval

General Conditions

1. For purposes of this approval the subdivision shall be defined as all features depicted on the plans described under condition number 2; the developer shall be defined as the applicant, Gerard and Jean D. LaCroix, and its assigns or successors in title to the development, and all contractors and subcontractors under control of or in service to the developer;
2. Except as otherwise provided for in these conditions the construction of the subdivision and all activities associated therewith shall be in conformance and compliance with the information, details, notations, grading and features shown on the following plans and drawings:
 - a. Sheet 1 of 2, Definitive Subdivision Plan 228 Salem Street dated April 28, 2006 last revised August 15, 2006, as prepared by Andover Consultants, Inc.
 - b. Sheet 2 of 2, Grading & Erosion Control Plan, dated April 28, 2006 last revised August 31, 2006, as prepared by DK Engineering Associates, Inc.

3. Original mylar prints of the above mentioned plans must be submitted for endorsement to the Planning Division within 30-days following the statutory 20-day appeal period.
4. Sheet 1 of a plan entitled "Definitive Subdivision Plan 228 Salem Street", dated April 28, 2006 last revised August 15, 2006, as prepared by Andover Consultants, Inc.; and an instrument containing these conditions, shall be recorded at the North Essex Registry of Deeds pursuant to the requirements of the Subdivision Rules and Regulations of the Andover Planning Board;
5. The owner and applicant shall, pursuant to statute, have twenty (20) days following the approval action of the Andover Planning Board to file an appeal of said action, and in the absence of an appeal shall be deemed to have accepted said action and these conditions;
6. Within five (5) days of the transfer of ownership of this subdivision, in whole or in part, the developer shall notify the Andover Planning Department of the name and address of the new owner(s). The developer shall provide the new owner(s) with a copy of these conditions;
7. No permits for building may be issued by the Inspector of Buildings for any lot within this subdivision unless and until the provisions of Section V.E. of the Rules and Regulations of the Board have been satisfied. Once a building permit has been issued for any particular lot this condition will be deemed to have been complied with and considered released for that lot;
8. Any blasting operations shall require proper permits, and may not be undertaken on any weekend or holiday;
9. All grading and earth disturbance within the subdivision shall be governed by Sections VI.F.6., and VI.F.7. of the Rules and Regulations of the Board, as well as the Special Permit for Earth Movement as issued under the Planning Board Decision SP06-14;
10. Import or export of earth materials from within the subdivision is prohibited except as may be provided for under special permit issued under Planning Board Decision SP06-14, or as otherwise allowed under the applicable provisions of the Zoning Bylaw;
11. Except as herein be waived, the subdivision shall be constructed in accordance with and subject to all applicable provisions of the Rules and Regulations of the Board. The approval and these conditions shall be enforced under the provisions of Section V.H. of the Rules and Regulations of the Board;
12. Prior to the recording of the definitive plan at the Registry of Deeds the developer shall provide the Planning Department with a municipal lien certificate indicating that all taxes, assessments and charges have been paid in full as required by MGL, Chapter 60, Section 23;

Prior to Construction

13. Prior to any construction activity of any kind within the subdivision the developer shall submit for review and approval to the Planning Department a proposed construction sequence schedule, said schedule is to be used as a guide to activities within the development including construction of roadways, utilities, drainage systems, stabilization, and stockpiling. This schedule once established shall not be deviated from, but may for good and demonstrated reason, be modified by agreement between the developer and the Planning Department;
14. Construction traffic associated with this subdivision shall be regulated by the Inspector of Buildings. Prior to commencing hauling operations, a hauling route shall have been reviewed and approved by the Inspector of Buildings. Any deviation from the approved route and/or scheduling once established shall require proper notification and approval from the Inspector of Buildings. Construction traffic shall be defined as large trucks hauling earth moving equipment, dump trucks, trucks hauling building materials, cement trucks, and contractors' vehicles larger than panel trucks. Hauling of earth materials and heavy equipment on the site is restricted to the time period between the last morning pick-up of school children, and the first afternoon drop off. It shall be the developer's responsibility to inform all contractors, subcontractors, vendors, and workmen of this restriction, which shall be enforced under the provisions of Section V.H. of the Board's Rules and Regulations;
15. Prior to introduction of construction equipment onto the site a meeting shall be conducted between the developer, the developer's contractors, and the Planning Department, as well as the Conservation Department, and Department of Public Works for the purpose of reviewing these conditions and the construction sequence schedule;
16. Prior to any construction activities on the site the Declaration of Common Scheme Restrictions shall be reviewed and approved by Town Counsel. Upon acceptance of said restriction by the Planning Staff, the restrictions shall be recorded at the Essex North Registry of Deeds with proof of recording provided to the Planning Division;
17. Prior to construction, the limit of disturbance shown on sheet 2 of said plan shall have been clearly marked on the ground, and said marking shall consist of siltation fencing, surveyor's flagging, ribboned stakes at appropriate intervals, and/or a combination of such devices as determined suitable by the Planning Division, and following the installation of such markings no earth disturbance or removal of vegetation of any kind shall be permitted within the protected areas. This restriction may not be released and shall survive changes in ownership of any subject lot;

Throughout Construction

18. Construction equipment or materials shall not be parked, stored, or placed in any area directly adjacent to or upgradient of any drainage channel or wetland area, nor in any cul-

de-sac island. Repairs and maintenance to equipment shall be conducted in areas where no spills or leakage of fuels or other fluids could pose a pollution hazard;

19. Earth disturbed by construction activities associated with the driveway, Rain Garden or easement areas, such as tree cutting, stump grubbing, cutting, filling, and regrading, shall be appropriately stabilized by methods determined by the Planning Department within sixty (60) days of such disturbance unless otherwise approved by the Planning Department;
20. No building lot shall remain in an open condition longer than sixty (60) days. "Open" shall be defined as that period of time between initial preparation of the lot for building (clearing of trees, stripping of topsoil), and the time that the foundation has been installed, backfilled, and the rough grading has been established and stabilized by use of temporary seeding, mulching, or netting. This restriction shall remain in force until the lot has been properly stabilized and shall survive changes in ownership of the lot;
21. Stockpiles of earth materials shall not be permitted in any area, which necessitates removal of trees for such purpose, nor within fifty (50') feet of any wetland boundary, drainage channel, or watercourse. Stockpiles shall be designated on a plan, which shall be submitted to the Planning Department, said locations to be determined by the developer and approved by the Planning Department. Stockpiles shall be prohibited in areas, which have not been approved by the Planning Division;
22. Long term (more than sixty days) stockpiles of earth materials shall be shaped and secured by butted haybales around the perimeter, and shall be promptly stabilized by temporary seeding or netting;
23. Burial or burning of vegetation, stumps, or construction debris is strictly prohibited anywhere within the subdivision. Such materials shall be removed and properly disposed of off the site;
24. All construction activities within the subdivision shall be confined between the hours of 7:00 a.m., and 6:00 p.m., Monday through Friday, unless otherwise approved by the Planning Board. Once fully framed, interior construction related activities are allowed on Saturdays between 8:00 a.m. and 6:00 p.m. unless otherwise restricted or prohibited by the Inspector of Buildings in response to complaints. Construction activities include the transport of equipment, materials and supplies to and from the subdivision. Interior construction within the structure once fully enclosed shall be regulated by the Inspector of Buildings;
25. As field conditions warrant, berms of type and design specified by the Department of Public Works shall be installed in locations determined by the written decision of the Director of Public Works;

26. Construction activities on individual lots shall be conducted in a workmanlike manner at all times. Blowing dust or debris shall be controlled by the developer of lots through stabilization, wetting down, and proper storage and disposal methods;

Prior to Clearance Certificates

27. Prior to issuance of any Clearance Certificates for the site, the developer shall have established a segregated account, which shall be used to secure proper stabilization and removal of all erosion controls prior to completion of the subdivision and to ensure planting of the seven (7) trees along the southerly boundary line as proposed. Said account shall be established in an amount recommend by the Town Engineer and Tree Warden and approved by the Planning Board and secured in a manner and form approved by the Board. This account once established shall be used as a mechanism to assure all unnecessary erosion controls are promptly removed and the plantings have taken place;
28. Prior to the issuance of a Clearance Certificate for the lots, all utilities shall have been fully constructed and approved by the Department of Public Works. Immediately following the installation of said utilities, the developer shall prepare as-built plans pursuant to Section VII.W. of the Rules and Regulations Governing the Subdivision of Land in Andover;

Prior to conveyance of lot

29. Prior to the conveyance of individual lots within the subdivision the developer shall provide the Planning Department with a surveyor's certification that temporary lot corners have been established on the ground for the lot to be conveyed. Once established, maintenance of these temporary corners shall be the responsibility of the lot owner;
30. The drainage areas shown on the plans shall be fully constructed, stabilized and operational prior to pavement of the driveways and development of any house lot;

Prior to release of the account

31. The seven (7) trees as approved by the Town Warden shown along the southerly boundary line must be planted and reviewed by Planning Staff and survive one (1) year following initial planting. The owner shall replace any trees that die within one year from the date of planting in kind and in similar size.
32. An as-built and profile plan of the site shall be submitted for review and approval to the Department of Public Works with a copy of the same being submitted to the Planning Division.

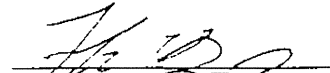
Specific Conditions

33. The developer shall be responsible for all maintenance of the drainage systems on Lot 1-B until such time as the lot of the subdivision is conveyed to a new owner, whereupon the system shall be maintained by the current owner of Lot 1-B to pay for the maintenance, repair and replacement of said system. The Town shall be provided with an easement to maintain and repair said system if necessary but all financial responsibility for any such repairs and maintenance shall be solely on the current owner of Lot 1-B;
34. The houses will be restricted to access from Salem Street with their legal address being limited to Salem Street.
35. The varying species of trees to be planted along the southerly boundary must be approved by the Tree Warden and submitted to the Planning Division prior to planting.
36. The Private Way shown on the plan is intended to remain as a Private Way in perpetuity, with the owner of Lot 1-A responsible for construction, maintenance and upkeep of the roadway, including snow removal. Likewise, all utilities including water service lines serving Lot 1-A and Lot 1-B shall be private. Trash pickup for Lot 1-A and Lot 1-B shall be on Salem Street;
37. This subdivision approval is limited to two (2) building lots as shown on the plan referenced above. There shall be no further subdivision of the lots shown on the plan as referenced in the Declaration of Common Scheme Restrictions, said restriction shall be reviewed and approved by Town Counsel and recorded at the Essex North Registry of Deeds;
38. The location of the proposed driveway for Lot 1-B shall be limited to Salem Street with a restrictive covenant being imposed on said lot which shall restrict the current fee holder(s) and all successors in interest that there shall be no right of access or egress to/from Lot 1-B upon the roadway shown as Private Way on said plan. Access and egress to the Lot 1-B and any dwelling thereon shall be limited to the public way known as Salem Street;

Following the statutory twenty-day appeal period, and in the absence of any appeal, the plan and an instrument containing the foregoing restrictions will be filed in the Registry of Deeds. The applicant is responsible for the costs associated with the Registry filings.

On August 11, 2015, at a regularly scheduled public meeting, the Andover Planning Board voted (5-0) to issue the foregoing Special Permit for Earth Movement.

Date: 8-11-15

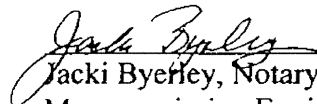

Zachary Bergeron, Chair

Essex, ss

COMMONWEALTH OF MASSACHUSETTS

On this 11th day of August, 2015, by Zachary Bergeron, the authorized agent of the Andover Planning Board, proved to me through satisfactory evidence, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the documents are truthful and accurate to the best of his knowledge and belief and who acknowledged to me that he signed it voluntarily for its stated purpose and acknowledged the foregoing to be the free act and deed of the Andover Planning Board.

Before me,


Jacki Byerley, Notary Public
My commission Expires:

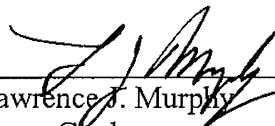
JACKI A. BYERLEY
NOTARY PUBLIC
My commission expires June 11, 2021

Applicant: Gerard & Jean LaCroix
Special Permit for Earth Movement
Decision: SP15-06

CERTIFICATION

I, Lawrence J. Murphy, Town Clerk of the Town of Andover, Massachusetts, do hereby certify that the preceding or attached decision of the Andover Planning Board was filed in the office of the Town Clerk on August 12, 2015 and that no appeal has been filed.

September 2, 2015



Lawrence J. Murphy
Town Clerk
Andover, Massachusetts

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